IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.10169 OF 2004

Maji Sainik Sahakari Grihnirman
Sanstha .. Petitioner

v/s.

The State of Maharashtra & ors. .. Respondents

Mr.G.S.Godbole for the petitioner.

Mr.R.M.Patne, Assistant Government Pleader for respondent Nos.1 and 2.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 29th March, 2005

P.C.

Heard Mr.G.S.Godbole, the learned counsel for the petitioner and perused the writ petition and the documents annexed thereto.

2. The petitioner is the Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960. The respondent No.4-Mrs.Vijayalaxmi Sangoge is the member of the petitioner-society. By the present writ petition, the petitioner-society prays for issuance of direction to respondent Nos.2 and 3 viz. The Collector, Solapur and the Municipal Corporation of City of Solapur for taking action against respondent No.4 for having raised unauthorised construction on the land belonging to the petitioner which according to the petitioner is the open space in the

sanctioned lay-out of the land.

3. It is admitted position that few members of the petitioner-society filed civil suit being Regular Civil Suit No.1351 of 2001 in the Court of Civil Judge, Senior Division, Solapur against the present respondent No.4 for mandatory and perpetual injunction for removal of unauthorised construction. It is also admitted position that the said suit has been dismissed on 29.9.2003. The Civil Judge, Senior Division, Solapur in his judgment passed on 29.9.2003 though recorded that Civil Court has no jurisdiction and the plaintiffs ought to have raised dispute under section 91 of the Maharashtra Co-operative Societies Act, also recorded the specific finding that the plaintiffs have failed to prove that the defendant (present respondent No.4) has encroached over the subject plot of land. The Civil Judge, Senior Division recorded that the evidence of the defendant (present respondent No.4) that the Secretary of the society permitted the defendant (present respondent No.4) to possess the suit plot cannot be discarded. It appears to us that some of the members having failed in the suit against the present respondent No.4, the society has now filed the present writ petition which does not seem to be bonafide.

4. Besides that, in view of the admitted position

that respondent No.4 is a member of the petitioner-society, the controversy regarding the unauthorised construction allegedly raised by the respondent No.4 can be resolved through the proceedings under section 91 of the Maharashtra Co-operative Societies Act or in any case by pursuing the ordinary legal remedy, as the case may be. Such disputed questions relating to unauthorised construction or otherwise cannot be gone into the extraordinary jurisdiction.

5. The learned counsel for the petitioner invited our attention to section 260 of the Bombay Provincial Municipal Corporation Act, 1949 and submitted that the said section empowers the Municipal Corporation to take action for demolition or removal of unauthorised construction. The learned counsel submitted that two applications in that regard (Exhibit-U and Exhibit-V) have been made to the Solapur Municipal Corporation. Needless to say that the concerned authorities would consider the said applications made by the petitioner and inform the petitioner of their present status, if not informed so far. We clarify that consideration of these applications by the concerned authorities shall not be a substitute for resolution of the dispute between the petitioner and respondent No.4 regarding encroachment of the subject plot of land through a proper legal process. Section 260 of the

Act of 1949 does not empower the authority thereunder to go into the controversy regarding encroachment in respect of subject plot.

6. With the aforesaid observations, writ petition is disposed of.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)